1951 **File No.** S. Belg

Legal **DEPARTMENT**

Examined A. **BRANCH**

Subject:— Suits: Belgaum.

In the Court of the Civil Judge (S.D.) B.

Civil Suit No. 408 of 1949.

Rajasaheb Abdulsaheb Jamadar

Vs.

The Province of Bombay and

Re: For a declaration that the removing the plaintiff from illegal.

P. 37
E

File No. S. Belgaum 1/51.

Std. Sectt. Slip 24-B

C O N T E N T S.

Legal Department File No. S. Bel. 1/51.

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Belgaum.

In the Court of the Civil Judge (S.D.)
Belgaum.

R. A. Jamadar

V/s.

The Province of Bombay and another.

For a declaration that the order removing the plff. from service is illegal

1-68

Reg. Civil Suit No. 408
1949.

IN THE COURT OF THE CIVIL JUDGE, S.DN, BELGAUM.

1. Rajesaheb Abdulsaheb Jamadar, aged 50, religion Muslim, ex-police sub-Inaspector, residing at Bijapur , opposite the Head Post Office . ... .. plff.

against.

1. G.R.Malpathak, age 50, religion Hindu, now serving as Principl, central Police Training School, Nasik.
2. The Province of Bombay. ... Defts.

Claim Rs:- 2000/- for court fees and Jurisdiction.

Suit for declaration.

Herein the plff befs to state as under:-

1. The plff was a police Sub Inaspector at Sound in 1948. Deft No.1 was then D.S.P at Belgaum. On 4-3-1948, t peranns were murdered at village Katral. The plff began the investigation of that office. On 15-3-1948, Mr. Karajgi Police Inaspector reached the scene of offence. Mr. Karajgi took away the investigation of the offe from the plff on the pretext of the plff's having fabricated false evidence against one of the accused. Deft 1 suspended plff from service from 18-3-1948 and ordered him to stay at Belgaum. The plff had gone to Bijapur(his family place) on 3 days' casual leave from 14-3-1948. The leave was further extended to 22-5-1948. From 22-5-1948 to 29-5-48 the plff suffered an attack of pneumonia and was an indoor patient at Government Dispensary at Bagewadi. The Medical Officer recommended sick leave of one month to the plff till 29-6-1948, on which the day the plfff reported to deft 1 for extending the leave by five days. Deft one refused to extend the leave. Pl reported to deft 1 for an interview with the D.I.G. No repl was given by deft 1 to this report. On 13-7-48, the D.I.G. passed an order permitting the plff to stay at Bijapur ins of at Belgaum. On 1-11-48, deft 1 framed a charge against plff, of gross negligence in having remained absent

permission, from Belgaum, ,from 22-5-48 to 4-7-48.

Deft 1 started departmental proceedings on the above charge For giving the defence statement, the plff requested deft 1 to supply him with a copy of his former statement. Deft one promised to do so. But instead of supplying the copy, he directed the plff to give his statement on 9-12-48. The plff informed deft 1, that he could not make his defence statement without looking into his former statement. From 9-12-48 to 24-12-1948, the plff had to attend courts at different places for giving evidence. On 19-12-48, deft No.1 issued an order to say that the default case against the plff would be decided exparte if plff did not appear before him till 30-12-48. On 24-12-48 plff appeared before deft 1 and requested him for 8 days' permission to stay at Bijapur, as telegrams were received from Bijapur about his wife and child being seriously ill. Deft 1 told plff to take the permission of the D.I.G. for his days' stay at Bijapur. Plff sought the permission of the D.I.G. by telegram. The D.I.G. refused to grant the permission. Plff fell ill at Bijapur. He informed deft 1 about it, saying that he would appear before him on the 3-1-1949. On 3-1-1949, the plff was summoned to attend the court of the Sessions at Belgaum. After marking his presence in the court, the plff went to the office of deft 1. Plff learnt then that deft 1 had that very morning made an order of removal of the plff from service. The plff appealed to the D.I.G. who on 16-5-1949 declined to interfere with the order of deft1.

2. The order passed by deft 1 for removing the plff from service is as given below:-

"Unarmed Head Constable 1 Grade R.A.Jamadar of Belgaum District is removed from the force with effect from 4-1-1949 B.N. for the following charge proved against him:-

'Gross negligence in that he remained absent without permission from Police Headquarters,Belgaum, from 22-5-1948 to 4-7-1948 while under suspension and failed to appear bef me three times though ordered to do so and stayed at Bijap only from 9-12-48 onwards inspite of the cancellation of t permission, granted by the D.I.G. ,S.R., to stay at Bijapur

2. He is not be paid any substistance allowance fr 9-12-48 onwards.

3. No.T.A. bill for journeys undertaken by him aft 18-5-48 should be passed wit out definite orders from the D

Sd/
D.S.P. Belgaum.

3. The said order is contrary to law:-

(a) It contravanes the mandatory provisions of sec. of the B.D.P.Act, since deft 1 has failed to make a note of the enquiry made.

(b) It contravenes the mandatory provisions of sec. (3) of the Government of India Act (1935) compliance with which is emphasised by Bombay Govt. G.R.P. and S. Deft. No 2733/34-D-of 6-8-45, since deft 1 failed to give any oppor ity to the plff to show cause against the order of removal from service.

4. The order passed by deft 1 is improper. Plff ha been suspended from service on the charge of the fabricat false evidence in the murder case. For that offence, a ch sheet was sent under sec, 193 and 194 I.P.C. against the to the court of the S.D.M.Belgaum Dn. by Mr. Karajagi at instance of deft 1. By prosecuting the plff in a court, d No.1 had transferred his jurisdiction over the movements theplff to the court. By suurping again that juris ion from the court without that court's permission, deft has committed contempt of court, So long as that case is pending, deft 1 was bound to maintain the status existed at the time of failing of occasion to curtail the liberty [illegible] plff of his

he has further created prejudice against the plff, which prejudice is likly to influence the result of the case - adversely to the plff.

5. Deft 1 had no justification to make the order in question. He was actuated by personal malice to make the order.

(a) When Mr. Karajgi took over the investigation of the murder case from the plff, Mr. Karajgi began to - concoct false evidence against theplff. Mr. Karajgi demanded Rs. 10,000/- from the plff for not proceeding against the plff. The plff was unable to meet the demand and hence his suspension from service was at once secured at the hands of deft 1. Later theplff saw deft 1 explained to him the facts of the case. Deft 1 sympathised with the plff and - told the plff to give a report for retiring on pension which he would favourably recommend to the I.G.P. Accordi--ngly plff gave the report. But in the meanwhile Mr. Karajgi saw deft 1 and told him a false tale that the plff had spread rumours of deft 1's having taken a bribe of Rs. 2000 in - Yadravi Murder case. Mr. Karajgi had made an entry about this rumour in his diary. Deft 1 then accosted the plff for having spread the rumour. Plff denied the allegation since he knew nothing about it. However deft 1 was not satisfied by this denial. Deft 1 insisted upon the plff to comply with the - demand of Mr. Karajgi. Plff told deft 1 that it was impossible for him to meet the demand whereupon deft 1 said that the plff should suffer the consequences thereof.

(b) As per note 3 to clause 4 of rule 1278 of the Police Manual. deft 1 ought to have given an opportunity to the plff to show cause before suspending him from service. Deft 1 did not comply with the above rule but suspended the service without giving an opportunity to show cause.

efore the murder case was heard, deft 1.

he plff under sec. 193 and

ition c

court

the court has to file a complaint and Mr. Karajgi jad no - authority to prosecute theplff.

(d) In the charge sheet sent against the plff sec. 19 I.P.C. was improperly added to make the offence a non bailab one. Nonbailable warrent was got issued and every attempt wa made to put the plff in jail. After great difficulty the pl secured bail from the Sessions Court.

(e) In Katral murder case, about 50 persons were involved and 18 were named in the complaint. Mr. Karajgi se up the case against 8 persons only and did not even show th names of the others as accused not sent up for trail, in t charge sheet nor did he get cancelled the bail bonds of 2 persons who were arrested. Thus Mr. Karajgi committed with impunity an offence under sec. 166 I.P.C. and sec. 36 of B.D.P.Act.

(f) Deft 1 had no reason to insist upon Plff's re: -dence at Belgaum where with his slender means, the plff unable to secute any accododation.

(g) Deft 1 even informed some of the Magistrates whose courts the plff had to attend for giving evidence i cases investigation by him to issue warrents against the

(h) In December 1948 deft 1 had received orders c transfer from Belgaum. He expected to be relieved from Be in the first week of Januory 1949.With a view to finish c the plff before he left, he dismissed the plff on 3-1-19 defying all rules and procedure.

(i) Deft 1 had undertaken to supply the plff with the copy of his former statement, to enable the plff to file his defence statement. Plff's former statement had been sent to the I.G.'s office. Deft 1 had written to that office to send it. But finding that it was not received by 3-1-49, deft 1 wound up the inquiry and dismissed the plff without any inqui ry

(j) Deft 1 had made an order that he would dispose of the inquiry against the plff exparte if he did not appear before deft 1 till 30-12-48. Plff did appear before on 24th and 25th December 1948. So deft 1 had no

to dispose of the inquiry exparte.

(k) Deft 1 had further ordered that no subsistance allowance should be paid to the plff with effect from - 9-12-48. This ordeamounts to an order of dismissal from s service made on 8-1-49, to have retrospective effect - from 9-12-48. Such an order of dismissal is illegal.

(l) Deft 1 had further ordered that payemnt of the T.A?bills of the plff for the journeys undertaken after 18-3-48 should be withheld. From 18-3-48, the plff was under suspension and all subsequent journeys were made by the plff to give evidence in different courts regarding the investigation made by him in past cases. Deft 1 had no authority to withhold the payment of the T.A for court's attendance borne out by court's certificates.

(m) On 13-7-48 the D.I.G. had permitted the plff to stay at Bijapur. Thus the D.I.G. had approved and - validated plff's previous stay at Bijapur. Inspite of this order of the D.I.G., deft 1 had no authority to question the order of the D.I.G. who is his superior.

6. Cause of action for this suit arose on 18-5-49 the date on which the order of the D.I.G. dismissing the plff's appeal, was communicated to the plff.

7. This court has jurisdiction to hear this suit since the cause of action arose within the jurisdiction of this Coort.

8. Deft 2 has been added as a party in this suit, since both the plff and deft 1 are the servants of deft 2. If this suit be decided in plff's favour, it is for deft2 to give effect to the Court's decree.

9. The suit being for a declaration, a court fee of Rs. 18-12-0 has been paid.

10. Notice of this suit as per section 80 of C.P.C has been served on deft 1 on and on the Secretary Home Department, Government of Bombay, on .

11. The plff prays:- (a) A declaration that the order in question passed by deft 1 is inoperative being illegal improper and unjust.

Legal Department.

Belgaum Civil Suit No.408/1949.

The suit is filed by an ex-Head-Constable who was removed from service for conduct amounting to breach of discipline. He has filed this suit for a declaration that the order removing him from service is illegal. The defence of the suit may be sanctioned on the lines of the accompanying brief.

2. Mr. G. R. Malpathak, at present Principal of the Central Police Training School, Nasik, has been made defendant No.1 in this case because he had passed the order of removal in his capacity as the District Superintendent of Police, Belgaum. The Home Department may sanction legal assistance to Mr. Malpathak under rule 189 of the Law Officer's Rules while expressing concurrence in the proposal to defend the suit.

·9934
13/7/52.

9 26 Jun

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION.

BELGAUM.

Civil Suit No.408 of 1949.

1. Rajasaheb Abdulsaheb Jamadar,
Ex-Police Head-Constable,
residing at Biajpur. Plaintiff.

v.

1. G. R. Malpathak,
now serving as Principal, Central
Police Training School, Nasik. Defendants.

2. The State of Bombay.

The following is the written statement on behalf of the Defendant No.2, the State of Bombay.

2. The plaint discloses no cause of action against this defendant.

3. The suit is barred under section 80(3) of the Bombay District Police Act. The order complained of by the plaintiff was passed on 3rd January 1949, and the suit having been instituted more than six months after that date is barred by limitation.

4. The defendant submits that notwithstanding the repeal of the Government of India Act, 1935, by art. 395 of the Constitution of India, the rights and remedies of the parties to the suit are governed by the relevant provisions of the Government of India Act, 1935. In view of section 240 of that Act the defendant submits that the plaintiff held office during His Majesty's pleasure and was liable to be dismissed at any time. The plaintiff has, therefore, no legally enforcible right against the Government and no declaration can be granted to him against it.

5. This defendant further submits that the

plaintiff

plaintiff is not entitled to claim any protection under sub-section (3) of section 240 of the Government of India Act, 1935. It is submitted that section 243 of that Act excludes the operation of sub-section (3) of section 240 so far as the members of the sub-ordinate ranks of the Police force to which the plaintiff belongs are concerned.

6. The order of the District Superintendent of Police passed against the plaintiff is nevertheless lawful and valid. Under section 29(3) of the Bombay District Police Act, the District Superintendent of Police is fully empowered to remove a sub-ordinate Police Officer from service. The plaintiff was charged with conduct contrary to discipline and gross negligence. The charge was found proved and the plaintiff was found, by reason of his insub-ordinate conduct, unfit to continue in service and was therefore, removed from service.

7. It is denied that the order of the Dist. Superintendent of Police contravenes the provisions of section 30 of the Bombay District Police Act. It is also denied that the said order is illegal or improper as alleged by the plaintiff in paragraph 4 of the plaint.

8. The allegations of malice etc., made against defendant No.1 are scandalous and untrue and the defendant submits that they should be expunged from the plaint.

9. The District Superintendent of Police passed the said order after following the rules relating to the departmental enquiry so far as it was possible to follow. Assuming without admitting that the rules of enquiry were not observed before the plaintiff was removed from service, the defendant submits that the

breach . . .

13 37 57

breach of those rules does not give any cause of action to the plaintiff.

10. It is further submitted that the Court has no power to decide whether the charge made against the plaintiff is proved or not.

The defendant submits,therefore, that the suit fails and ~~xxx~~ may be dismissed with costs.

District Government Pleader,

I District Government Pleader, do hereby declare that what is stated in paragraphs 1 to 10 is true according to the information received and believed to be true. This verification is made at on / the day of 1950.

District Government Pleader,

No. 10925

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 2nd August 1950

Subject:- Belgaum Civil Suit No. 408 of 1949

MEMORANDUM.

The District Government Pleader, Belgaum, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which together with two copies of the written statement is sent herewith in advance.

Papers of the case in one file received from the Collector accompany.

S/C RS

For Remembrancer of Legal Affairs.

The District Government Pleader,
Belgaum

Submitted for signature.

ka 10.8.50.

31/7

Issued copy 2/8.

A.S. Has the H.C.'s Lordships orders sanctioning Legal Assistance to Shri. Malpathak as per my note of 13-7-50? If not the papers should be returned to H.O. for the purpose after issue of the brief.

RW
1/8/50

Submitted after issue.

It seems H. D. has not passed any orders sanctioning legal assistance to Shri Malpathak. These pps. may be forwarded to H. D. for the purpose as directed by A. S. on the top.

3/8

A

A. S. R. W.
4/8/50

U. O. R. to H. D. no. 11097-Ait. 4/8/50.

HC DEPT. RALLI
File No. S-57/5448
Date 5-8-50
Serial No. 11821

Home Deptt - A.

Please see the L. D.'s notes on pages 29 and above.

2. Shri Malpathak may be allowed to defend the suit brought against him by the ex-P. S. I. Shri Jamadar. Legal assistance may be granted on the conditions imposed in Shri Kagal's case - file no. 1600/6 below. The accompanying orders may issue, after F. D. has seen.

GI
8/8

I. Grant no. 14359 D. 12-10-50 sent to Parties, vide letter dated 28/

22.8.50.

DS

23/8

HOME DEPARTMENT
File No. S/57/5448
Date 2-9-50
Ind. 13235

FINANCE
File No. F
Date 24-8-50
Ind. 37463

no to F. D. d. 23.8.50.

Finance Deptt
F

P 57-58

The orders proposed by the H. D. are, he agreed to.

AS(M)

R 31/8

Orders issued 8/9

VERY URGENT.

No. J. 410 of 1950.
Belgaum, 5th December 1950.

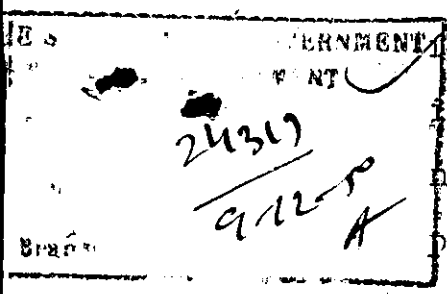
To,

The Remembrancer of Legal Affairs, Bombay.

Subject:- Civil Suit No. 408 of 1949 on the file of C.J.
R.A.Jamadar Plff.
Vs.
G.R.Malphatak and State of Bombay Defts

Sir,

With reference to the subject noted above, I have the honour to inform you that the pleader for plff has filed an application in court on 3-11-1950, in the above noted suit No. 408 of 1949, asking to strike out the Written Statement filed on 12-9-1950, on behalf of Deft 2 i.e. Government. I have been served with copy of the same and kept here with for favour of perusal. It is, therefore, requested that necessary instructions may kindly be intimated to do the needful in the matter. The matter is fixed for hearing of the plff's application on 20.12.1950. This may please be treated as very urgent.



Yours faithfully,

Dist. Govt. Pleader, Belgau

Legal dept.

Submitted for information and for orders.

SSH.
9/12

A.S.O'Ha. The D.J.P. should send a copy of the application referred to therein, & should also state why the reason for sending the intimation to this office on 5-12-50 when the application was made on 3-11-50. He should also submit immediately a copy of the [redacted] a copy of the Reply proposed by him to the filed against the application.

Ch
9-12

Civil Suit No. 408/1949

In the Court of the Civil Judge, S.D.,

At Belgaum.

1. R.A. Jamadar... Plaintiff.

Versus

1. G.R. Malpathak... Deft 1.

2. The Bombay State... Deft 2.

Suit for declaration.

Herein the plff begs to apply under O. 6 R. 16 C.P.Code to strike out the written statement filed on 12-9-1950, by the learned Government pleader, Belgaum, on behalf of Deft 2, for the following grounds.

1. The written statement tends to prejudice, embarass and delay the fair trial of the suit.

2. All the contentions set up by the G.P. in the W.S. are hollow and groundless.

3. The G.P. by virtue of his office, is precluded from setting up such contentions. He has verified the contents of the written statement to be true to the best of his knowledge and belief. This verification is irreconsilable with his position as a G.P. He cannot be expected to be ignorant of ordinary and common points of law, nor can he verify state-ments which he does not believe to be true.

4. The plff submits that since India is a sovereign republic state, every citizen of India is sovereign to an equal extent. Under Article 14 of the Constitution of India every citizen of India is equal in the eyes of law and is entitled to an equal protection of laws. The G.P. being a

a public servant, is as much a pleader for the Plff as for the Defts. He is a Court Officer and as such he is legally bound to state the case of deft No. 2 so as not to mislead the court nor to prejudice the plff.

5. In para 1 of the written statement, it is stated that the plaint does not disclose any cause of action against Deft. No. 2. The said cause of action has been stated in para 8 of the plaint. Further, the assertion in para 5 of the written statement saying that the order of the Deft No. 1 passed against the plff is lawful and valid, itself creates a cause of action against deft 2. By that assertion deft 2 has ratified the act of deft No. 1 and hence he is liable to be sued jointly and severally for the act of deft No. 1 (vide page 150 of Clerk and Lindsell on Torts, 10th Edition 1947) as also page 483 of the Law of Torts by S. Ramswami Ayyar (1932).

6. In para 2 of the written statement, it is stated that this suit is barred under Sec. 80(3) of the Bombay District Police Act. The order of dismissal passed by Deft 1 is not a tort (vide page 5 of Clerk and Lindsell on Torts) and hence the said section 80 which speaks of an offence or wrong (tort) does not apply to the present suit. Secondly, the order passed by deft 1 did not amount to a complete wrong until it was confirmed by the D.I.G. in appeal. Plff had a statutory right of appeal under Sec. 241(3)(c) of the Government of India Act 1935 until that right was exercised by the plff, the order of deft 1 remained incomplete. Thirdly, deft 2 cannot set up the bar of limitation under Sec. 80 of the B.D.P. Act since the plff was as much aggrieved by the order of the D.I.G. as by the order of Deft 1. Hence , even if deft 1 is omitted from the suit, still deft No. 2 is liable to be sued for the act of the D.I.G., viz. the order, dated 16-5-1949 which is within 6 months from the date of the suit (27-10-1949).

11. In para 7 of the written statement the G.P. has stated that the allegations of malice against Deft 1 made in the plaint are untrue and that they should be expunged from the plaint. These allegations were made not to scandalise deft 1, but to enqble deft 2 to inquire into them. The G.P. has simply stated that the allegations are untrue. But the G.P. has not stated as to whether any inquiry was made by deft 2 into those allegations. In the absence of any inquiry, the mere denial of the allegations is of no help to further the interests of the suit.

12. In para 8 of his written statement the G.P. has stated that assuming without admitting that the rules of inquiry were not followed by deft 1, still the breach of the rules does not give any cause of action to the plff. This contention of the G.P. is not proper. He ought to have advised deft 2 find out whether deft 1 did as a matter of fact commit breach of the rules and if he did that he ought to have advised deft 2 to take disciplinary action against deft 1 for their breach. He ought to have advised deft 2 that if the plff is to be held responsible for the breach of orders, Deft 1 should be held responsible to a greater extent since rules have more vinding force than orders.

13. The plff submits that the ends of administration of justice would be defeated if the G.P. were to expend public money by contesting law points which are stare dicisio and by trying to uphold a wrong committed by public servant against another.

Belgaum,
3-11-1950

Pleader for the Plaintiff.

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7. In para 3 of the written statement, it has been stated that Section 240 of the Government of India Act governs the rights and remedies of the parties to the suit. The G.P. has ignored para 3(b) of the plaint, wherein it has been stated as to how the breach of Sec. 240(3) of the Government of India Act by Deft 1 in having not given an opportunity to the plff to show cause before removing him from service, gives a legally enforceable right to the plff against both the defts. This right has been established by a number of judi-cial decisions.(vide Secretary of State for India Vs. I.M. Lal 1945 A.I.R. P.C. page 45 and the appeal to the P.C. reported in 1948 A.I.R. P.C. 121).

8. In para 4 of the written statement, the G.P. asserts that S. 243 of the Government of India Act excludes the operation of Sec. 240(3) of the said Act. This assertion is incohsistent with his own statement in para 3 of his W.S. and is negatived by a number of judicial decisions (vide Rangachari Vs. S. of S. of India 1937 A.I.R. P.C. p. 27, Suraj Narayan Vs. N.W.F. Province, 1942, A.I.R. P.C. page 3 and Provinde of Punjab Vs. Tarachand 1947 A.I.R. P.C. Page 23).

9. In para 5 of the written statement, the G.P. states that by Sec. 29(3) of the Bombay District Polict Act, deft 1 had authority to remove the plff from service and hence his order is lawful. The G.P. has ignored the fact that the authority of Deft 1 is subject to the provisions of Sec.240 of the Government of India Act. Sec. 30 of the Bombay District Police Act and to the rules and orders made by the Provincial Government since deft 1 has contravened these provisions, the order passed by deft 1 under his authority, is rendered illegal and inoperative.

10. In para 6 of the written statement, the G.P. has simply denied the illegality etc. of the order of deft 1. He has not stated the grounds for the denial.

No. 17584 23

Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 11th December 1950

Suit- Civil Suit No. 408 of 1949

MEMORANDUM.

With reference to his letter No.J 416 dated 5th December 1950 the District Government Pleader, Belgaum is requested to state as to why he sent the intimation regarding the plaintiff's application to this office on 5th December 1950 when the application was made on 3.11.50. He is further requested to draft a reply to the application and send it for the approval of Remembrancer of Legal Affairs.

For Remembrancer of Legal Affairs.

To

The District Government Pleader,
Belgaum.

U.
11.12. Issued 11/12

Submitted for signature.
11/12

Await press copies.

MM.

15/12

No. J. 438 of 1950.
Belgaum, 19th December 1950.

To,

The Remembrancer of Legal Affairs, Bombay

Subject:- Civil Suit No. 408 of 1949
R.A. Jamadar.
Vs.
R.R. Kalphatak and State of Bombay.

Sir,

With reference to your letter No.17584 dated 11th December 1950 and in continuation of this office No. J. 416 of 1950 dated 5th December 1950, I am to state that although the application bears the date 3-11-1950 still - it was served on me on 23-11-1950. The intimation therefo regarding the application could not be made earlier.

The objections to the application have been drafted and they are sent to you for approval. The matter is fixed on 20-12-50 and an adjournment therefore will have to be applied for. Next date will be intimated to you.

Yours faithfully,

List. Govt. Pleader, Belgaum.

Legal Dept.

Please see the letter overleaf from the D.G.P. Belgaum.

The draft reply to the plaintiff's application is for approval.

WH
23/12

Sola. This is a suit by the Pltf. for a declaration that the order passed by D.G.P. removing him from service is illegal. After Govt. had filed a W.S. (vide slip K) the Pltf. made an application to the Court (vide slip L) praying that the W.S. filed by Govt. may be struck out. The D.G.P. has submitted a draft reply (vide slip Y) which he proposes to file, for approval. The draft may be approved, if it may also be added specifically therein that.

27-63

There is Nothing in the W.S. of govt. which is unnecessary, or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the Suit, & that the Pl's application is entirely misconceived.

S. Jn. Khating
28-12-50.

Sec. (Judl.)

28/12/50

Reg. O.S.No. 408 of 1949

In the Court of Civil Judge. S.Dn, at Belgaum.

1. Rajesab Abdulsaheb Jamadar, Ex-police Head Constable, residing at Bijapur. ... ... Plff.

Vs.

1. C.R.Malphatak, now serving as Principal Central Police Training School, Nasik. Defts.
2. The State of Bombay.

The following is the Written Statement on behalf of the Deft. No.2, the State of Bombay.

1. The Plaint discloses no cause of action against this deft.

2. The suit is barred under section 80(3) of the Bombay District Police Act. The order complained of by the plff was passed on 3rd January 1949 and the suit having been instituted more than six months after that date is barred by limitation.

3. The deft submits that notwithstanding the repeal of the Government of Indai Act, 1935, by art. 395 of the Constitution of India, the rights and remedies of the parties to the suit are governed by the relevant provisions of the Government of India Act, 1935- In view of section 240 of that Act the deft submits that the plff hold office during his majesty's pleasure and was liable to be dismissed at any time. The plff has, therefore, no legally enforceable right against the Government and no declaration can be granted to him against it.

4. This deft further submits that the plff is not entitled to claim any protection under sub-section (3) of section 240 is submitted that section 243 of that Act excludes the operation of sub-section (3) of section 240 so far as the members of the sub-ordinate ranks of the police force to which the plff belongs are concerned.

5. The order of the District Superintendent of Police passed against the plff is neverthless lawful and valid. Under section 29(3) of the Bombay District Police Act. The District Supdt. of Police is fully empowered to remove a sub-ordinate Police Officer from service. The plff was charged with conduct

contrary to discipline and gross negligence. The charge was found proved and the plff was found, by reason of - his insubordinate conduct, unfit to continue in service and was therefore, removed from service.

6. It is denied that the order of the Dist. Supdt. of Police contravenes the provisions of section 30 of the - Bombay District Police Act. It is also denied that the - said order is illegal and improper as alleged by the plff in paragraph 4 of the plaint.

7. The allegations of malice etc., made against deft No.1 scandalous and untrue and the deft. submits that - they should be expunged from the plaint.

8. The District Superintedent of Police passed the - order after following the rules relating to the departmental enquiry so far as it was possible to follow. Assuming - without admitting that rules of enquiry were made not - observed before the plff was removed from service, the deft submits that the breach of these rules does not give any cause of action to the plff.

9. It is further submitted that thd Court has no power to decide whether the charge made against the plff is proved or not.

The deft submits, therefore, that the suit faile and may be dismissed with costs.

District Govt. Pleader,
Belgaum.

District Govt. Pleader, Belgaum do hereby declare that what is stated in paragraphs 1 to 9 is true according to the information received and believed to be true. This verification is made at on the day of 1950.

District Govt. Pleader,
Belgaum.

Reg. O. S. No. 408 of 1949.

In the Court of Civil Judge, Senior Division,
at Belgaum.

1. R.A. Jamadar .. .. Plaintiff.

vs.

1. G.R.Malphatak and State of Bombay... Defendant.

Herein the objections to the plaintiffs application Ex. 18 dated 3-11-1950 are as follows :-

1. The application is only misconcieved. The allegations made therein are argumentative and hence they are denied.

2. The application under Order 6 Rule 16 of the C.P.C. does not lie. The said Rule 16 "contemplates amendment or striking out of any matter in any pleading" It does not warrant the striking out of an entire Written Statement. The Plaintiff has not made it clear in his application what matters in the Written Statement, he wants the court to strike out. Assuming that he does not require certain matters to be struck out, still, it would be necessary to go into questions of fact and law, before making an order on the application. The application therefore cannot be considered at this stage at all.

3. Under O. 27 C. P. Code, Government Pleader is authorised to sign and verify pleadings in the suits against Government or Public Officer in their official capacity. The contention therefore that the Written Statement has not been properly verified by the Government Pleader is of no substance Assuming that the Government Pleader has verified" to the best of his knowledge and belief" his knowledge and belief must be presumed to be based on the instructions of Government as well as that of the Public Officer concerned - which matters could be gathered from the record. The allegations therefore that the District Government Pleader has no authority to verify as he has done is of no substance.

4. The application is both premature and untenable at law.

5. There is nothing in the Written Statement of Government which is unnecessary, or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit, and ~~that~~ the ~~P.G's~~ plaintiffs application is entirely misconceived.

It should therefore be rejected.

Belgaum.

Date.

District Government Pleader,
Belgaum.

BM.
29.12.

H 33

No.123
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 30 January, 1951.

Subject:- Civil Suit No.408 of 1949
R.A.Jamadar
vs.
G.R.Malphatak and another.

Memorandum.

With reference to his letter No.J 438 dated 19th December, 1950, the District Government Pleader, Belgaum is informed that two copies of the revised draft reply to the plaintiff's application are forwarded herewith.

o/e

for Remembrancer of Legal Affairs.

To

The District Government Pleader,

Belgaum.

Issued

Submitted after issue
Await press Copies.

-3547
4/1

STLZ.

lw/
4-1.

35 — 73

Suits :

Belgaum.

For a declaration that the order removing the plaintiff from service is illegal.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 14359.

Bombay Castle, 12th October 1950.

Letter from the Inspector General of Police, Poona, No. 5517, dated 17th June 1950—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 408 of 1949.

Rajasaheb Abdulsaheb Jamadar ... ... Plaintiff;

versus

The Province of Bombay and another ... ... Defendants.

Memorandum to the District Government Pleader, Belgaum, No. 10925, dated 2nd August 1950—Forwarding a copy of the brief with its accompaniments in advance.

AXB Leg H 116—1

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

R Tantaskri

Original for } P. M. LAD,
Secretary to Government.

G. R., No. 14359, L. D., dated the 12th October 1950.

To

*The Home Department,
*The Inspector General of Police, Poona,
*The District Superintendent of Police, Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

Issued 22/10/51

Suitable action

Sd in S. Belgaum/51/(illegible)

23-10-51

A S 51/2 Cr/23-10

37-75

BELGAUM CIVIL SUIT No. 408 OF 1949.

Chronological Statement of Facts.

The plaintiff Rajasaheb Abdulsaheb Jamadar, an ex-police Head Constable has filed this suit against Mr. G. R. Malpathak, at present Principal, Central Police Training School, Nasik, and the Government of Bombay, for a declaration that the order of the Defendant No. 1 dated the 3rd January 1949, removing the plaintiff from the Police Force is illegal and inoperative and for costs of the suit.

2. The plaintiff was a Police Head Constable in the District Police Force. In March 1948, he was officiating as a Sub-Inspector of Police at Saundatti, Belgaum District. While holding that charge he was found to have been responsible for fabricating false evidence in a murder case and was, therefore, placed under suspension with effect from 18th March 1948 and ordered to be prosecuted under section 194 of the Indian Penal Code. The order of suspension directed him not to leave Belgaum Police Head-quarters during the period of suspension without the permission of the District Superintendent of Police.

File, p. 1.

3. He was, however, granted permission to leave Belgaum for three days from the 14th May 1948 and the period was further extended up to 21st May 1948. The plaintiff, however, did not return to Belgaum on the 22nd May 1948, remained absent from the Police Head-quarters from 22nd May 1948 to 4th July 1948, and failed to appear before the District Superintendent of Police although ordered to do so.

4. For breach of discipline it was decided to hold a departmental inquiry against the plaintiff. He was charged with gross negligence in that he remained absent without permission from the Police Head-quarters, Belgaum, from 22nd May 1948 to 4th July 1948, while under suspension and failed to appear before the District Superintendent of Police three times although ordered to do so and only stayed at Bijapur from 9th December 1948 onwards in spite of the cancellation of the permission granted by the D. I. G., P. S. I., to stay at Bijapur. The inquiry was held by the District Superintendent of Police, Belgaum, who, as a result of his summing up, passed the order on 3rd January 1949, removing the plaintiff from service.

5. On 19th August 1949, the plaintiff gave notice under section 80 of the Civil Procedure Code, and on 27th October 1949, he filed the suit in the Court of the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

The plaintiff seeks relief against the order of the District Superintendent of Police which was

passed on the 3rd January 1949. His contention is that the order was illegal as it contravened the provisions of section 30 of the Bombay District Police Act, and section 240 (*3*) of the Government of India Act, 1935. The suit was, however, filed on the 27th October 1949. Section 80 (*3*) of the Bombay District Police Act, 1890, enacts that in the case *inter alia* of a wrong alleged to have been done by a Police Officer, by any act done under colour or in excess of any such duty or authority imposed or conferred upon him no suit shall be entertained if instituted more than six months after the date of the act complained of. The order of the District Superintendent of Police was passed in exercise of the authority conferred upon him by section 29 (*3*) of the District Police Act. As the suit is filed after the expiration of six months even excluding the period of notice, it is time-barred under section 80 (*3*).

2. The first contention of the plaintiff is that the order is bad as it contravenes the provisions of section 30 of the Bombay District Police Act, 1890. This contention seems idle. Section 30 requires that when any officer passes an order for fining, suspending, reducing or dismissing a Police Officer he shall record such order or cause the same to be recorded together with the reasons thereof and a note of the inquiry made in writing under his signature in the language of the District or in English. The District Superintendent of Police has fully complied with this section. At the end of the departmental proceedings against the plaintiff he recorded a lengthy summing up stating his reasons for passing the order of removal and the formal order was separately recorded under his signature on the 3rd January 1949. It is, therefore, not clear how the order contravenes the provisions of section 30. The plaintiff must be called upon to adduce strict proof of his contention.

3. The second contention is that the order contravenes the provisions of section 240 (*3*) of the Government of India Act, 1935, inasmuch as the defendent No. 1 did not give an opportunity to the plaintiff to show cause against the proposed punishment of his removal from police force. Since the order was passed in 1949, the rights and remedies of the parties to the suit will continue to be governed by the relevant provisions of the Government of India Act, 1935, *vide* Article 367 of the Constitution of India and section 6 of the General Clauses Act, 1897. It should, however, be contended that the plaintiff is not entitled to the protection of sub-section (*3*) of section 240 of the Government of India Act. The plaintiff was a member of the subordinate ranks of the Police force for whom a special provision was made in section 243 of the Act of 1935. That section provides:—

"Notwithstanding anything in the foregoing provisions of this chapter, the conditions of

service of the subordinate ranks of the various Police Forces in India shall be such as may be determined by or under the Acts relating to those forces respectively."

It was held by the Privy Council in the case of N. W. F. P. *v.* Suraj Narain Anand, 50 Bom.L.R. 425, that the right of dismissal is a condition of service within the meaning of those words in section 243 and that that section excludes the operation of sub-sections (*2*) and (*3*) of section 240 in respect of the members of the Subordinate Police Forces. Therefore in view of the terms of section 243 as interpreted by the Privy Council, the plaintiff cannot rely upon sub-section (*3*) of section 240. His conditions of service are determined by the Bombay District Police Act, 1890, and the rules made thereunder. Under section 29 (*3*) of that Act the District Superintendent of Police was competent to pass the order removing him from service. The powers given to the District Superintendent of Police and other officers under section 29 (*3*) are kept alive under section 243 of the Government of India Act, 1935, and it was in exercise of those powers that the District Superintendent of Police removed the plaintiff from service as he was of the opinion that the plaintiff was not amenable to discipline and had disobeyed the orders of his superior officer.

4. The next contention is that the order is improper because the plaintiff was under suspension on the charge of fabricating false evidence for which he was being prosecuted under sections 193-194 of the Indian Penal Code, and that by prosecuting the plaintiff the defendant No. 1 had "transferred his jurisdiction over the movements of the plaintiff to the Court", and further that the defendant No. 1 had no power to curtail the liberty of the plaintiff during that period. By way of reply, it should be pointed out that a Police Officer does not cease to be such while under suspension. He continues subject to the same responsibilities, discipline and penalties and to the same authorities as if he had not been placed under suspension, but the powers, functions and privileges vested in him as the Police Officer are in abeyance for the period of suspension [*vide* note below paragraph 1278 (4) of the Bombay District Police Manual, Vol. III, page 754]. While under suspension, therefore, the plaintiff was bound to obey all lawful orders given to him by the District Superintendent of Police and for breach of discipline by disobedience to those orders he was liable to be dealt with departmentally. Consequently, there is no question of the defendant No. 1 usurping the functions of the Court or committing contempt of the Court. All such contentions in paragraph 4 of the plaint are puerile and should be denied *in toto*.

5. *No cause of action.*—There is no cause of action for this suit either against Mr. Malpathak, the defendant No. 1 or against Government.

Under sub-section (*1*) of section 240 of the Government of India Act, 1935, servants of the Crown in India held office during His Majesty's pleasure and were liable to be dismissed at any time (Secretary of State *v.* Yadavgir, I.L.R. 60 Bom. 42; Krishnaji *v.* The Secretary of State, 39 Bom. L.R. 807; Venkatrao *v.* The Secretary of State, 39 Bom.L.R. 699). Consequently the dismissal of the plaintiff from Government service even assuming without admitting that it was wrongful as contended by the plaintiff, can afford no ground for relief either by way of declaration or injunction. This is because the retention of the plaintiff in service having been at the pleasure of the Crown the plaintiff had no legally enforceable right to relief if he was removed from the service of the Crown. Such right did not exist against the Crown nor does it exist against the present defendants or any of them.

6. *Merits.*—The plaintiff does not deny that he was absent from the Police Head-quarters, Belgaum, from 22nd May 1948 to 4th July 1948 contrary to the orders of the District Superintendent of Police. His excuse is that from 22nd May 1948 till 29th May 1948 he was suffering from an attack of pneumonia and had forwarded a certificate from the Medical Officer at Bagewadi recommending him one month's leave. The Medical Certificate was, however, returned to him through the District Superintendent of Police, Bijapur, for having it countersigned by the Civil Surgeon, Bijapur. The plaintiff did not do this, but remained absent from Belgaum, without permission from the District Superintendent of Police, Belgaum. It was only on 6th July 1948 that he applied to the Deputy Inspector General of Police, for permission to stay at Bijapur instead of at Belgaum, on account of the illness of his wife and children. This permission was granted to him subject to certain conditions. The plaintiff says that from 9th December 1948 to 24th December 1948 he had to attend Courts at different places for giving evidence. He took a similar stand in the departmental inquiry perhaps with a view to explaining his absence from Belgaum without leave. However the District Superintendent of Police found that he was not attending Courts every day between the relevant period and the roads leading to the two Courts which he had to attend passed through Belgaum where he was required to stay during the period of suspension. In these circumstances, the District Superintendent of Police was right in coming to the conclusion that the plaintiff was not amenable to discipline and had remained absent without permission not only from the 22nd May 1948 to 4th July 1948, but also on other subsequent dates. The plaintiff has made scandalous and scurrilous allegations against defendant No. 1 and against Mr. Karjagi, the Police Inspector. Those allegations are entirely irrelevant and scandalous and the Court should be invited to expunge them from the plaint.

File, pp. 40-41.

41 27

7. The plaintiff has alleged that the order of removal against him was passed *ex-parte*, i.e. without giving him the proper hearing and he was not supplied with his former statement. These allegations are completely misleading and false and have been properly dealt with in the 'Summing up' of the District Superintendent of Police on which reliance should be placed. It will be seen from the summing up that the procedure relating to the departmental inquiry which is laid down in the District Police Manual, paragraph 1278 onwards was followed as far as possible. It should further be pointed out that the Court has no power to consider whether the charge made against the plaintiff has been proved and whether the punishment is adequate or severe. The Statute has given to the District Superintendent of Police the power to dismiss or remove from service a Police Head Constable when the District Superintendent of Police thinks he is unfit for service. The discretion in this behalf having been given to the District Superintendent of Police, the Court cannot inquire into the circumstances, consider the question afresh, and substitute its own discretion for that of the District Superintendent of Police (Ahmedabad Municipality *v.* Maganlal, 9 Bom.L.R. 156; Bulahidas *v.* Secretary of State, I.L.R. 31 Allahabad 371; Dunn *v.* Queen (1896) Q.B. 116; and Venkatrao *v.* Secretary of State, 39 Bom. L.R. 699). The plaintiff's allegations on these points are, in fact, untrue and should be denied. In particular, all his allegations in this behalf in paragraphs 1 and 5 of the plaint should be denied.

8. Lastly, it should be contended that assuming without admitting that the rules of enquiry were not properly observed before the plaintiff was removed from service, the breach of rules does not give the plaintiff any cause of action. Where the limitations or qualifications of the Crown's power to dismiss its servants at will are found only in rules made under a Statute which whilst expressly enacting that servants of the Crown hold office during his Majesty's pleasure also provide that such tenure is subject to the provisions of rules made thereunder, nonetheless the breach of the provisions of such rules affords no cause of action at all (See Vankatrao *v.* Secretary of State, 39 Bom.L.R. 699). The plaintiff is, therefore, not entitled to relief of declaration and, therefore, it should be urged that the suit fails and must be dismissed with costs.

No. 20585/E 43-8

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 8th December 195

Subject:- Civil Suit No. 408 of 1949.
Rajasaheb Abdulsaheb Jamadar.
vs.
The Province of Bombay and another.

MEMORANDUM.

With reference to the subject noted above, the Distric Government Pleader, Belgaum is requested to state how the matter stands at present.

for Remembrancer of Legal Affairs,

To

The District Government Pleader,
Belgaum.

BM.
6.12.

Submitted for perusal
Hon.
6/12
Sd(H)

Submitted after issue
Await report from D.G.P

Jw
9/12

Supat NB
9/12/52

41

No. J- 730 of 1952.
Office of the District Government
Pleader, Belgaum, Dated:- 16 -12-1952

To

The Remembrancer of Legal Affairs, Bombay.

Subject:- Civil Suit No. 408 of 1949.
Rajesaheb Abdulsaheb Jamadar.
Vs.
The Province of Bombay and another.

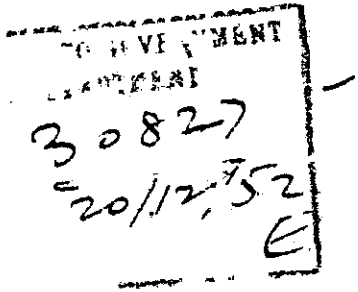
Reference:- Your Office No. 20585/E. dated 8th dec.19

Sir,

With reference to the subject noted above, I have honour to state that the suit in question is fixed for hearing on the 19th December 1952.

Yours faithfully,

Dist.Govt.Pleader, Belgaum.



L. D.

Submitted

Pl. see D.G.P's letter overleaf.

The Home Dept. is being informed accordingly. The M.O.R may be signed

Thu
20/12

Sol (M).
22/12

H.R to H.D. No. 21774/E dt. 24-12-52

Jones
24/12

1/57 (Read with D.G.P.'s No. J. 828 3-11-53)

Exhibit No. 21

7

DECREE:-

In the Court of the Joint Civil Judge.
Senior Division. Belgaum.

Reg. Civil Suit No. 408 of 1949.

1. Rajesaheb Abdulsaheb Jamadar, Age 50, Religion Muslim, Ex-police Sub-Inspector, Residing at Bijapur, Opposite the Head Post Office. } Plff.

Against.

1. G.R.Malphathak, age 50, religion Hindu, now serving as Principal, Central Police Training school, Nasik.
2. The State of Bombay. } Defts.

Claim Rs 200/- for court fees and jurisdiction

Suit for declaration.-

1 The plff was a Police Sub-Inspector at Saundatti in 1948. Deft 1 was then D.S.P. at Belgaum. On 4-3-1948, five persons were murdered at village Katral. The plff began the investigation of that offence. On 15-3-1948, Mr.Karajgi Police Inspector reached the scene of offence. Mr. Karajgi took away the investigation of the offence from the plff on the pretext of the plff's having fabricated false evidence against one or the accused. Deft 1 suspended the plff from service from 18-3-1948 and ordered him to stay at Belgaum. The plff had gone to Bijapur (his family place) on 3 days' leave from 14-5-1948. The leave was further extended to 22-5-1948. From 22-5-1948 to 29-5-1948 the plff suffered an attack of pneumonia and was an indoor patient at the Government Dispensary at Bagewadi. The Medical Officer recommended sick leave or one month to the plff till 29-6-1948, on which day the plff reported to deft 1 for extending the leave by five days. Deft 1 refused to extend the leave. Plff reported to

deft 1 for an interview with the D.I.G. No reply was given by deft 1 to this report. On 13-7-1948, the D.I.G. passed an order permitting the plff to stay at Bijapur instead of at Belgaum. On 1-11-1948, deft 1 framed a charge against the plff, of gross negligence in having remained absent without permission from Belgaum, from 22-5-1948 to 4-7-48. Deft 1 started departmental proceedings on the above charge For giving the defence statement, the plff requested deft 1 to supply him with a copy of his former statement. Deft 1 promised to do so. But instead of supplying the copy, he directed the plff to give his defence statement on 9-12-48. The plff informed deft 1, that he could not make his defence statement without looking into his former statement. From 9-12-48 to 24-12-48, the plff had to attend Courts at diff--erence places for giving evidence. On 19-11-48, deft 1 issued an order to say that the default case against the plff would be decided ex-parte if plff did not appear before him till 30-12-48. On 24-12-48 plff appeared before deft 1 and requ--ested him for 8 days' permission to stay at Bijapur, as telegrams were received from Bijapur about his wife and child being seriously ill. Deft 1 told plff to take the permission of the D.I.G. for his 8 days' stay at Bijapur. Plff sought the permission of the D.I.G. by telegram. The D.I.G. refused to grant the permission. Plff fell ill at Bijapur. He informed deft 1 about it, saying that he would appear before him on 3-1-49. On 3-1-49, the plff was summoned to attend the Court of Sessions at Belgaum. After making his presence in the Court, the plff went to the office of defendant No.1. Plff learnt that that deft 1 had that very morning made an order of removal of the plff from service. The plff appealed to the D.I.G. who on 16-5-49 declined to interfere with the order of deft No.1.

2. The order passed by deft 1 for removing the plff from service is as given below:-

49

Unarmed Head Constable I Grade R.A.Janadar of Belgaum District is removed from the force with effect from 3-1-49 B.N. for the following charge proved against him :

" Gross negligence in that he remained absent without permission from police Head quarters Belgaum, from 22-5-48-to 4-7-48 while under suspension and failed to appear before me three times though ordered to do so and stayed at Bijapur only from 9-12-48 onwards inspite of the cancellation of the permission, granted by the D.I.G.P.S.H., to stay at Bijapur

2. He is not to be paid any subsistence allowance from 9-12-49 onwards.

3. No T.A. bill for journeys undertaken by him after 18-5-48 should be passed without definite orders from the D.S

Sd/

D.S.P.Belgaum.

3. The said order is contrary to law:

(a) It contravenes the mandatory provisions of Sec.30 of the B.D.P.Act, since deft 1 has failed to make a note of the enquiry made.

(b) It contravenes the mandatory provisions of Sec. 240(3) of the Government of India Act (1935) compaiances with which is emphasised by Bom. Govt. G.R.P. and S. Dept. No. 2733/34-D-of 6-8-45, since deft 1 failed to give any opportunity to the plff to show cause against the order of removal from service.

4. The order passed by deft 1 is improper. Plaintiff has been suspended from service on the charge of fabricating false evidence in the murder case. For that offence, a charge sheet was sent under Sections 193 and 194 I.P.C. against the plff to the Court of the S.D.M. Belgaum Dn. by Mr.Karadgi at the instance of deft 1. By prosecuting the plff in a Court, deft 1 had transferred his jurisdiction over the movements of the plff to the Court. By usurping again that jurisdiction from the Court without that Court's permission, deft 1 has committed contempt of Court. So long as that case

is pending, deft No.1 was bound to maintain the status quo that existed at the time of filing of the case. By creating an occasion to curtail the liberty of the plff and by depriving the plff of his subsistence allowance, deft No.1 has disabled the plff from properly defending himself in the Court and he has further created prejudice against the plff, which prejudice is likely to influence the result of the case adversely to the plff.

5. Deft 1 had no justification to make the order in question. He was actuated by personal malice to make the order.

(a) When Mr. Karajgi took over the investigation of the murder case from the plff, Mr.Karajgi began to concoct false evidence against the plff. Mr.Karajgi demanded Rs 10,000/- from the plff for not proceeding against the plff. The plff was unable to meet the demand and hence his suspension from service was at once secured at the hands of deft 1. Later the plff saw deft 1 and explained to him the facts of the case. Deft 1 sympathised with the plff and told the plff to give a report for retiring on pension which he would favourably recommend to the I.G.P. Accordingly plff gave the report. But in the meanwhile Mr. Karajgi saw deft 1 and told him a false tale that the plff had spread rumours of deft 1's having taken a bribe of Rs 2000/- in Yadravi murder case. Mr. Karajgi had made an entry about this rumour in his diary. Deft 1 then accosted the plff for having spread the rumour. Plff denied the allegation since he knew nothing about it. However, deft 1 was not satisfied by this denial. Deft 1 insisted upon the plff to comply with the demand of Mr. Karajgi. Plff told deft 1 that it was impossible for him to meet the demand whereupon deft 1 said that the plff should suffer the consequences thereof.

(b) As per note 3 to clause 4.of Rule 1278 of the

Police

police Manual, deft 1 ought to have given an opportunity to the plff to show cause before suspending him from service Deft 1 did not comply with the above rule but suspended the plff from service without giving an opportunity to show cause.

(c) Long before the murder case was heard, deft 1 got a charge sheet sent against the plff under Sec.193 and 194 I.P.C. at the hands of Mr.Karajagi in contravention of Sec. 195 Cr.P.C. According to this section, the Court has to file a complaint and Mr.Karajagi had no authority to prosecute the plff.

(d) In the charge sheet sent against the plff Sec.194 I.P.C. was improperly added to make the offence a non bailable one. Non-bailable warrant was got issued and every attempt was made to put the plff in jail. After great difficulty the plff secured bail from the Sessions Court.

(e) In Katral murder case, about 30 persons were involved and 18 were named in the complaint. Mr.Karajagi sent up the case against 8 persons only and did not even show the names of others as accused not sent up for trial in the charge sheet nor did he get cancelled the bail bonds of 2 persons who were arrested. Thus Mr.Karajgi committed with impunity an offence under Sec.166 I.P.C. and Sec.36 of B.D.P.Act.

(f) Deft 1 had no reason to insist upon plff's residence at Belgaum where with his slender means, the plff was unable to secure any accommodation.

(g) Deft 1 even informed some of the Magistrates whose Courts the plff had to attend for giving evidence in cases investigated by him to issue warrants against the plff.

(h) In December 1948 deft 1 had received orders of transfer from Belgaum. He expected to be relieved from Belgaum in the first week of January 1949. With a view to finish off the plff and before he left, he dismissed the plff on 3-1-49 defying all rules and procedure.

(i) Deft 1 had undertaken to comply the plff with the copy of his former statement, to enable the plff to file

his defence statement. Plff's former statement had been sent to the I.G.'s office. Deft 1 had written to that office to send it. But finding that it was not received by 3-1-49, deft 1 wound up the inquiry and dismissed the plff without any inquiry.

(j) Deft 1 had made an order that he would dispose of the ~~xxx~~ inquiry against the plff ex-parte if he did not appear before deft 1 till 30-12-48. Plff did appear before deft 1 on 24th and 25th December 1948. So deft 1 had no reason to dispose of the inquiry ex-parte.

(k) Deft 1 has further ordered that no subsistence allowance should be paid to the plff with effect from 9-12-48. This order amounts to an order of dismissal from service made on 3-1-49, to have retrospective effect from 9-12-48. Such an order of dismissal is illegal

(l) Deft 1 has further ordered that payment of the T.A. Bills of the plff for the journeys undertaken after 18-3-48 should be withheld. From 18-3-48, the plff was under suspension and all subsequent journeys were made by the plff to give evidence in different Courts regarding the investigations made by him in past cases. Deft 1 had no authority to withhold the payment of the T.A. for Court's attendance borne out by Court's certificates.

(m) On 13-7-1948 the D.I.G. had permitted the plff to stay at Bijapur. Thus the D.I.G. had approved and validated plff's previous stay at Bijapur. Inspite of this order of the D.I.G., deft 1 had no authority to question the order of the D.I.G. who is his superior.

6. Cause of action for this suit arose on 18-5-1949 the date on which the order of the D.I.G. dismissing the plff's appeal, was communicated to the plff.

7. This Court has jurisdiction to hear this suit since the cause of action arose within the jurisdiction of this Court.

8. Deft 2 has been added as a party in this suit, since both the plff and deft 1 are the servants of Deft 2. If this suit be decided in plff's favour, it is for deft 2 to give effect to the Court's decree.

9. The suit being for a declaration, a Court fee of Rs 18-12-0 has been paid.

10. Notice of this suit as per section 80 of C.P.C. has been served on Deft 1 on 19-8-1949 and on the Secretary, Home Department, Government of Bombay, on 18-8-1949.

11. The plaintiff prays for:-

a) A declaration that the order in question passed by defendant No.1 is imperative being illegal, improper, and unjust.

b) Costs ofthis suit.

c) Permission to amend the plaint, if necessary.

This suit coming on 24-6-1953 before Shri P.D.Mahatekar B.A.,LL.B., Joint Civil Judge, Senior Division, Belgaum, in the presence of Shri D.D.Behere and Shri D.A.Chaugule pleaders for the plaintiff and Shri M.R.Patil District Government Pleader, for Defendants. it is hereby ordered and decreed as follows:-

" It is hereby declared that order passed by the D.S.P Belgaum, on 3-1-1949 by removing the plaintiff from service is ultravires, illegal and inoperative. The plaintiff shall recover the costs of the suit from Defendant No.2. Defendants do bear their respective costs of the suit ".

Bill of costs (contd)

BILL OF COSTS:

	Plff.	Deft 1.	Deft 2.
1. Stamp for plaint..	Rs 18-12-0.	0-0-0.	0-0-0.
2. " for vakalat.	1-4-0	0-10-0.	0-0-0.
3. " for applications.	4-6-0.	0-14-0.	7-8-0.
4.Process fees.	1-8-0.	-	
5. Pleader's fees.	15-0-0.	15-0-0.	15-0-0.
	40-14-0.	16-8-0.	22-8-0.
Applications rejected with costs.	2-8-0.		2-8-0.
Grand Total.	38-6-0.	16-8-0.	20-0-0.

Given under my hand and the seal of this Court. this 24th day of June 1953.

Sd/-
Plff's pleader.

Sd/- P.D.Mahatekar.
11-7-53.

Sd/-
Defts' Pleaders.

JOINT CIVIL JUDGE. J.D.
BELGAUM.

* True Copy *.

Awaiting return of Hos from HD

7/12
Sol (M)

53

8. Deft 2 has been added as a party in this suit, since both the plff and deft 1 are the servants of Deft 2. If this suit be decided in plff's favour, it is for deft 2 to give effect to the Court's decree.

9. The suit being for a declaration, a Court fee of Rs 18-12-0 has been paid.

10. Notice of this suit as per section 80 of C.P.C. has been served on Deft 1 on 19-8-1949 and on the Secretary, Home Department, Government of Bombay, on 18-8-1949.

11. The plaintiff prays for:-

a) A declaration that the order in question passed by defendant No.1 is imperative being illegal, improper, and injust.

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Bill of costs (contd)

LD 157/15

elgaum Suit No 408-1949.

This suit was filed by an officiating Sub Inspec of Police against the State of Bombay and the D.S.P. Belgaum for a declaration that the order of dismissal from service passed by the latter on 3-1-1949 was illegal and void. The facts leading to the suit are briefly these :-

The plff was posted at Saundatti as SubIns-pector of Police in 1948. He was inquiring into a murder case when certain allegations were made against him. It was found on inquiry that there wa reason to believe that the plff was fabricating false evidence against some of the accused persons in the murder case. The plff was then suspended from service with effect from 18-3-1948 by the order of the D.S.P. Belgaum (deft No1) . The D.S.P. further ordered that the plff should not leave Belgaum during the period of suspension, without his permission. Later on it wad found that the plff was away from Belgaum from 22-5-1948 to 4-7-1948 . For this breach of order a Depart mental Inquiry was started against him, and a charge was framed for negligence and disobedience. The plff was called upon to answer that charge and to appear before the D.S.P. on 9-12-1948 . But the plff avoided appearing before him on various pretexts. The plff also asked for a copy of his previous statement dated 5-7-1948. That copy was not supplied to him. The plff was warned that if he did not appear to make his defence the matter would be decided exparte. The plff promised to appear before the D.S.P. on 3-1-1949. But he did not appear before him during office hours. The D.S.P. then passed an order on 3-1-1949 dis missing the plff from service. This is the order challenged by the plff in this suit.

The State of Bombay and the D.S.P. filed written Statements justifying the order of dismis al. But the case was inherently indefensible.

The Court held that the order of dismissal was illegal and void for many reasons. The Court therefore made the declaration sought by the plff. The question is if an appeal may be filed against that decision.

The D.G.P. Belgaum has expressed the view that this was not a proper case for filing an appeal . That view seems to be proper

The Departmental Inquiry seems to be irregular from the beginning to the end. The D.S.P. issued the order of plffs suspension from service without first issuing a show cause notice to him as required by Rule 1278 Note No 3, of the Police Manual. The corresponding present Rule is Rule No 541 A .

Secondly the D.S.P. had no right or authority to pass an order that during the period of suspension the plff must stay in Belgaum and that he must not leave that town without the permission of the D .S.P. Such an order amounted to plffs internment and the plff could validly urge that the order amounted to an obstruction in the matter of preparing his defence. Such an order is held to be wrong by our High Court in 53 Bom.L.R. page 754.

The charge itself related to the violation of the order that plff must not leave Belgaum town. If that order was wrong and illegal no charge could be framed for the violation of the illegal order.

During the inquiry the plff had asked for a copy of his previous state ment dated 5-7-1948. That copy was never supplied to him. The plff can make a legitimate grievance of that fact.

Lastly it seems that the D.S.P. omitted to issue a show cause Notice to him before inflicting on him the punishment of dismissal. From 1945 the Bombay Police Manual had been amended and it had been provided that such a Notice to show cause shpuld be issued before the punishment proposed is finally inflicted.

The Inquiry was thus illegal and the order of dismissal could not be justified . The decision of the trial Court is right and this would not be a proper case for filing an appeal.

The GOvt may therefore acquiesce in the decision . It would be for the Home Department to decide what other action may be taken against the plff.

Secretary LD 27/7 Spoken 29/7

1591 11 E 28.7.5

Legal Department.

In this case a Sub Inspector of Police had been suspended in March 1948 on a complaint that he had fabricated false evidence against an innocent person during the investigation of a murder case. The order of suspension was accompanied by another order thatthe Sub Inspector may not leave Belgaum during the period of suspension without the previsous permission of the D.S.P. The defaulter disobeyed the letter order and left Belgaum without permission and remained outside Belgaum for 2 months. For this breach a departmental inquiry was held against him on charges of disobedience and negligence. As a result of that inquiry he was dismissed by the D.S.P. by an order dated 3-1-1949.

2. The Sub Inspector filed suit No.408/49 in the Belgaum Court. The Civil Court held that the order of the D.S.P. requiring the defaulter not to leave Belgaum without his permission was illegal. The Sub Inspector could not be dismissed for the disobedience of an illegal order. The Court therefore declared that the order of dismissal was illegal and inoperative.

3. The Government decided not to appeal against the decision of the Court under the circumstances of the case. The question now is: What further action can be taken against the defaulter ?

4. It seems that two questions have been raised in the Report of the D.S.P. at page 53. The first is whether a Departmental inquiry may be held against the defaulter for fabricating false evidence against an innocent person. The second is whether it is necessary to reinstate the defaulter, and to suspend him again in view of the decision of the Civil Court.

5. As regards the first point it appears that a criminal case had been filed against the defaulter on 26-9-1948 for offences under sections 193 and 194 Indian Penal Code. But the defaulter raised a

preliminary objection that a formal complaint was necessary from a competent Court under section 195B Criminal Procedure Code. That objection was overruled by the trying Magistrate. But the High Court held in Revision that a formal complaint from a competent court was necessary for starting the prosecution in such a case. The High Court directed that a proper complaint may be filed by the competent Court. This has not been done so far. The conduct of the defaulter in fabricating false evidence against an innocent person prima facie amounts to a crime and a criminal case had already been filed against him for the same. That prosecution has failed for a technical reason. The technical defect may be removed and a proper complaint may be filed by a Competent Court, as directed by the High Court. It will not be proper to drop the criminal prosecution at this stage and to start a departmental inquiry for the same misconduct. The H.D. may be therefore informed that the prosecution may be proceeded with first by filing a proper complaint as directed by the High Court. If the prosecution fails for want of evidence or some other reason the question of a departmental inquiry on the same charge may be considered.

6. As regards the second point, it is clear that the effect of the decision of the Civil Court will be that the order of dismissal passed by the D.S.P. on 3-1-1949 will be nolonger operative. But that fact will not have any effect on the order of suspension passed by the D.S.P. in March 1948. The order of suspension will continue to operate as pointed out in R.L.A's opinion No.4492/A dated the 7th March 1953. It will not be necessary to issue a fresh order of suspension before continuing the Prosecution . The defaulter may be, therefore, informed that the order of his dismissal dated the 3rd January 1949/having been held by the Civil Court to be illegal , it is no longer operative, but that he continues under suspension.

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Jt. Secy. 6/4

59 — 11

Legal Department.

It seems that two questions have been raised in the Report of the District Superintendent of Police at page 53. The first is whether a Departmental inquiry may be held against the defaulter for fabricating false evidence against an innocent person. The second is whether it is necessary to reinstate the defaulter, and to suspend him again in view of the decision of the Civil Court.

As regards the first point it appears that a criminal case had been filed against the defaulter on 26th September 1948 for offences under sections 193 and 194 Indian Penal Code. But the defaulter raised a preliminary objection that a formal complaint was necessary from a competent Court under section 195B Criminal Procedure Code. That objection was overruled by the trying Magistrate. But the High Court held in Revision that a formal complaint from a competent court was necessary for starting the prosecution in such a case. The High Court directed that a proper complaint may be filed by the competent Court. This has not been done so far. The conduct of the defaulter in fabricating false evidence against an innocent person prima facie amounts to a crime and a criminal case had already been filed against him for the same. That prosecution has failed for a technical reason. The technical defect may be removed and a proper complaint may be filed by a Competent Court, as directed by the High Court. It will not be proper to drop the criminal prosecution at this stage and to start a departmental inquiry for the same misconduct. The Home Department ~~may~~ is therefore informed that the prosecution may be proceeded with first by filing a proper complaint as directed by the High Court. If the prosecution fails for want of evidence or some other reason the question of a departmental inquiry on the same charge may be considered.

As regards the second point, it is clear that the effect of the decision of the Civil Court will be that the order of dismissal passed by the District Superintendent of Police on 3-1-1949 will be no longer operative. But that fact will not have any effect on the order of suspension passed by the District Superintendent of Police in March 1948. The order of suspension will continue to operate as pointed out in R.L.A's opinion No. 4492/A dated the 7th March 1953. It will not be necessary to issue a fresh order of suspension before continuing the prosecution. The defaulter may be, therefore, informed that the order of his dismissal dated the 3rd January 1949 having been held by the Civil Court to be illegal, it is no longer operative, but that he continues under suspension.

oc JSP 8/4/54

Joint Secretary to Government.

U.R. to H.D., No. 9850/E, dated the 9th April 1954.

wdtn LD file
No. S.Bdl. 4/53
cks/7.4. to Lagna
4/5.

Submitted for signature
7/4
Sol(M.L) 8/4
Jt. Secy.

Legal Department
R.I.No.13147 dt. 8-5-54.

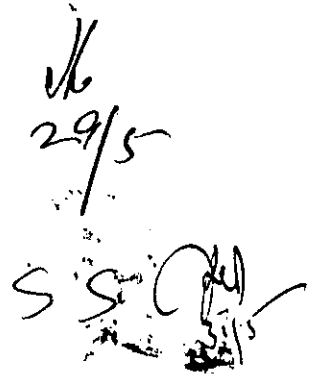
Submitted with reference to the Home Department note at p. 12 ante.

L.D. file No.S.Bel.1/51 may be retained and H.D. papers may be returned to that Department with a request to send to this Department papers at pages 1 to 7 and 11 to 14 of c/s as the same pertain to this Department.

Sel(H.I)Sel/- E.P.B
28/5

N. R to H.D No 13509/E dt 29th May '54

Award receipt of his Ms HD



- 115 63

Office of the R. L. A.

Attention of the H. D. is invited to this office U.R. to H.D. No.13509/E dated the 29th May 1954 and that department is requested to return L. D. papers immediately.

For Remembrancer of Legal Affairs.

U. R. to H. D. No. 21627/E dated 17-9-56

Issued 17/9

17/9

See (115)

Aerial return of p/s for HD

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15/9

65-47

L.D.R.I:No. 27542
dt. 24-9-54.

Submitted with reference to the H.D. note at pp. 1-2 ante.

The Deptt. may be informed that the pps. at pp. 1 to 7 only have been retained by this Deptt. These pps. along with H.D. file No. L.D.15711 may be returned to that Deptt. with the above note.

Id.
24/9.

Solr. (M.L.) Id. S.R.K.
24/9.

U.R. to H.D.No. 22222/E, dated the 27th September '54.

Letter H.D. file No. 15711

Issued
27/9

Submitted.
G. R. recording the
result may cause

N
2019

S E

Suits.
Belgaum.
For a declaration that the order removing the plaintiff from service is illegal.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1236/E
Bombay Castle, 14th June 1955.

Read Government, Resolution, Legal Department No.14359, dated the 12th October 1950.

Letter from the Collector of Belgaum No.LAW/876 dated the 30th July 1953 stating that the suit noted in the margin was decided by the Joint Civil Judge, Senior Division, Belgaum on the 24th June 1953, when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Belgaum.	:	
Civil Suit No.408 of 1949.	:	
Rajasaheb Abdulsaheb Jamadar..Plaintiff. vs. The Province of Bombay and another.. ... Defendants.	:	

"It is hereby declared that order passed by the D.S.P. Belgaum, on 3-1-1949 by removing the plaintiff from service is ultra vires, illegal and inoperative. The plaintiff shall recover the costs of the suit from from Defendant No.2. Defendants do bear their respective costs of the suit."

Letter from the District Government Pleader, Belgaum No.J 828, dated the 3rd November 1953, forwarding uncertified copy of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

(D.P.Shikhare),
Deputy Secretary to Government.

To

The Home Department,
The Collector of Belgaum,
The Inspector General of Police, Bombay State, Poona,
The District Superintendent of Police, Belgaum,
The District Government Pleader, Belgaum.

KML/9